WINNING THE STATE LICENSING EXAM GAME...

ON YOUR VERY FIRST ATTEMPT

The Texas insurance exam is composed of 150 scoreable questions. (You will be given several practice questions that don’t count.) The chapters you have just completed account for about 125 of those questions. The remaining 25 or so scoreable questions will stem from the Texas State Insurance Law and Regulations which will be found in the State Law chapters which make up this module of your course.

You will discover that the information contained in these Lessons is entirely different from what you encountered in the earlier chapters. Likewise, the questions that you will find covering this material on the State Exam will require you to know the content in a significantly different way. For the same reason that you would not show up for a tennis match in a football helmet, your study methods and preparation for this portion of the exam should be based upon a different strategy altogether.
What’s the difference? Well, the general knowledge questions tend to focus on your **understanding** of the insurance concepts and products that you have studied. How does the Law of Large numbers make insurance possible? How does coinsurance affect a claim? What is the purpose of a deductible? State Law is little more than **rote memory**. It is much like the Motor Vehicle Code section of your Driver’s Test: What is required when you encounter an octagon shaped sign? How many feet does it take to come to a full stop when traveling 60 miles per hour? The information is not difficult; it does not necessitate any deep understanding on your part. It is merely a collection of facts, but facts that you must **know by heart**. Most of us, today, have forgotten that it takes 160 feet to stop from 60 miles per hour, but we knew that little nugget of information when we sat for our driver’s test. We put in the effort, waded through the facts and committed them all to memory. Even the agonizing pressure of taking an exam that would determine our whole future (at least in the minds of teenagers) could not erase the critical data from our hormone-charged, pubescent brains. You must know the State Law content of your licensing exam in the very same way.

Now the good news…and the **secret to winning the exam game**. To pass the licensing test, you need to answer **105 of the 150** scoreable questions correctly. If you can respond accurately to all 25 scoreable Texas state law questions, you only need another 80 out of 125 to pass…**only 64%**. Said another way, if you are a bit shaky on some of the general knowledge info, you can make up for it by nailing the State Law questions. Even better news!! There is but one factor that will determine your success on this part of the exam…**effort**. Experience in the business is not a factor, I.Q. has nothing to do with it, even great test-taking skill is of little consequence. This is nothing more or less than memory work. But it is work…it’s not fun, it’s not exciting, it’s not even particularly interesting…**it is work**. But, if you willing put in the work, you can score 23, 24 or even 25 points on the State Law material, and you can almost guarantee your success in passing the State Exam on your very first try.

**GENERAL INSURANCE REGULATION**

**Overview**

Insurance is a **state regulated industry**. As such, the **Texas Department of Insurance** is charged with the responsibility of enforcing the insurance laws enacted by the Texas legislature. The Department, then, is part of the **executive branch** of our state government. But, in addition, the Department has some quasi-legislative and quasi-judicial
responsibilities. No, the Insurance Department cannot pass laws and the Commissioner of Insurance does not wear a black robe or carry a gavel. But, the Department is granted the authority to promulgate (put into effect by public pronouncement) **rules and regulations** that producing agents and their companies must follow. And, the Department can **conduct hearings and levy administrative penalties** such as fines and license revocation.

Two words that surface frequently in this section are *notice* and *hearing*. These two words assure you of due process under the law. Since the time of the Magna Carta, it has been unlawful for the government to seize your property without due process. Your insurance Producers license is your property. Initially you may value it no more highly than any other piece of paper in your purse or wallet. But, if three years from now that license is allowing you to earn $100,000 a year, it may well be your most important possession. If the Department of Insurance believes you are in violation of Texas insurance law, they cannot simply seize your license. You must be given notice and informed of your rights to a hearing. That is due process.

**THE DEPARTMENT OF INSURANCE**

**Texas Commissioner of Insurance**
(Ins 31.001, .002, .021; 39.001, 81.001-.056, 86.001-002, 201.004; 404.051-53; 481.001-.009; 491.051-.052; 521.003-.004; 4001.005)

The chief executive and administrative officer of the Texas Department of Insurance is the Texas **Insurance Commissioner**. The Commissioner is **appointed by the governor with the consent** of the Texas Senate. He/she serves a **2-year term** ending on February 1 of every odd-numbered year. He is required to post a public official’s bond of at least **$50,000** and is ineligible to run for any other public office while acting as Commissioner.

As head of the Department of Insurance, the Commissioner may:

- Operate the Department
- **Enforce the insurance laws**, rules and regulations of Texas
- Utilize the powers and duties conferred upon him
- **Examine** or investigate persons or companies engaged in the business of insurance
- **Make any reasonable rules** or regulations necessary carry out the insurance laws of Texas
- Utilize any fair and legal remedy to assure enforcement of the laws, regulations and orders governing insurance within the department.
Company Regulation

Certificate of Authority (Ins. 801.051-.053)

As a rule, an insurance company may not transact business in Texas without first obtaining a Certificate of Authority. This means that an insurance company must have a license to market insurance in Texas. Just as you need a Producers license, your company (or Health Maintenance Organization) must have a license...a Certificate of Authority...to offer their products within the borders of Texas. When a foreign or alien company is granted a Certificate, that company becomes an admitted (or authorized) company within the state of Texas.

In previous chapters, you learned the definitions of domestic, foreign, and alien companies. All 3 need a Certificate of Authority to do business in Texas. The Certificate must state the specific kinds of insurance authorized under the Certificate. For example, a company admitted to sell Life insurance could not start offering Auto insurance without further approval. The Certificate is effectives until it is revoked or suspended. The Commissioner will grant the Certificate after verification that:

- The company has met the capital and surplus requirements of the Code (i.e., the company is financially sound)
- The company has submitted a sound plan of operation
- The character and experience of the directors and officers will assure reasonable promise of a successful operation
- There is no good reason to believe that the leadership of the company is affiliated in any way with persons known to have been involved in the improper manipulation of assets, accounts or reinsurance.

One set of circumstances is an exception to our rule that only those companies with a Certificate of Authority can sell insurance in Texas. This exception typically arises on the Property and Casualty side of our business. Suppose that you inherit a cranberry bog on Cape Cod from your grandfather. You intend to continue his operation, but you
do not want to move to Massachusetts. It is entirely possible that you could never find a Texas company to insure a cranberry bog business, but you need the insurance. If Bog Mutual, a nonadmitted Texas company, offers such coverage, you could purchase it through a **Texas Surplus Lines Producer**. This is a specialty license that will be mentioned again in this Lesson.

**Examination of Records** (Ins. 38.001; 401.051-.062)

The Commissioner, of course, is not only concerned with the financial health of an insurance company when they are originally granted their Certificate of Authority, he must constantly monitor companies admitted to do business in Texas to assure that they remain fiscally robust. Specifically:

- Companies doing business in Texas must submit to the Department an audited **annual statement** reporting the financial condition of their operations.
- The Commissioner may, at any time and as **frequently as he deems necessary** conduct an **examination** of any company authorized in Texas.
- By law the Commissioner must examine every company doing business in Texas at least once **every 5 years**.

**Record of Complaints**

Insurance companies must maintain a complete record of all complaints received in the previous **3 years** or since the last departmental inspection. The complaint file must contain:

- The total **number** of complaints
- **Classification** of complaints by line of insurance
- The **nature** of each complaint
- The **disposition** of the complaint (that is, how the insurance company handled the complaint)
- The **time** spent processing the complaint
If, based upon the number of complaints, the Department finds a company to be unfairly handling claims, the Department can order the company to begin making regular reports to the Department recording the total number of complaints, classifying the complaints by:

- The line of insurance
- The number of claims denied
- The amounts sought by the claimants and the amount of the final settlement.
- The number of lawsuits filed by the claimants per line of insurance
- The amount requested by the claimant, the amount offered by the company, and the amount awarded by the court.

With this information, the Department and the subject company can compare the claims history from one period to the next to determine if claim practices are improving.

**Investigation of Complaints against the Company**

Based upon the number and types of complaints against the company, the Department can choose to investigate the company’s claim practices. If the Department determines that the company is in violation of the Unfair Claims Settlement Act, a hearing will be scheduled and notice given the company.

If the evidence presented at the hearing causes the Department to conclude that the company is in violation, the company can be ordered to **Cease and Desist** in their current claim practices. Violation of the Cease and Desist Order could lead to the company losing their right to do business in this state.

**LICENSING REQUIREMENTS**

**Who Are Producers?** (Ins. 4001.003(1), .051)

A person (in legal language, a *person* can mean an individual, corporation, partnership or bank) who **solicits, sells or negotiates** contracts of insurance on behalf of an insurance company or Health Maintenance Organization through any form of communication is considered an insurance Producer and should be licensed as such. There are **exceptions**, however, people who work within the insurance industry who do not need a license to perform their job requirements:
• A regular salaried officer or **employee of an insurance company** who does not solicit applications from the public and/or devotes substantially all of his time to activities other than sales and receives no commission or compensation which is dependent upon business obtained.

• A person who **makes a referral** to a licensed Producer unless the unlicensed person discusses specific policy terms or benefits with the prospect.

• A person acting on behalf of an **employee benefit plan** in an administrative capacity who is not directly or indirectly compensated by the insurance company or HMO involved.

• A **bank** or other depository institution which collects and/or remits premium by deducting those charges against accounts of depositors.

**Licensing Process** (Ins. 4001.006, .102, .103, .105; 4002.001)

**Individuals**

Working on behalf of an insurance company as a Producer is a **4-step** process.

• First you must **obtain a Producers license**.
• Then, the company or companies you represent must **appoint you** as an agent of that company.
• The Department of Insurance collects from you a nonrefundable **license fee**.
• From your company or companies, the Department collects a nonrefundable **appointment fee**. All fees collected are credited to the Texas Department of Insurance operating account.

The Department will issue a license to an individual who seeks to become a Producer when the applicant:

• Is at least **18** years of age
• Has **passed the licensing exam** in the last **12 months**
• Has not committed any act for which a license could be denied, like a felony
• Has **submitted the application**, appropriate fees and any other information required by the Department.

The Department may deny an application if the applicant fails to provide a complete set of **fingerprints** at the Department’s request.
Corporations, Partnerships and Banks (Ins. 4001.106-.107)

A corporation, partnership or bank may also hold a Producers license if they are legally organized and authorized to business in this state, and:

- The corporation, partnership or bank has submitted a completed application, appropriate fees and any other information required by the Department
- At least one officer or partner and all other persons acting as Producers are individually licensed Producers
- Each location from which the entity will engage in the business of insurance is separately licensed
- The entity maintains a surety bond of $25,000 and an Errors and Omissions policy of at least $250,000 to offset any negligent act for which it becomes legally obligated to pay
- No officer, director, partner or member has had a license suspended, revoked or denied in Texas or any other state; and, no one has committed an act for which a license could be denied.

Types of Licenses (Ins. 4001.003, 4056.301-.304, 4052.001, 4051.051, TAC19.1501-.1503, 4053.051, 4051.401, 4051.151, TAC 19.1201-.1206, 981.202, 4153.051)

Texas Life Insurance licenses available include:

- Life, Accident and Health Producers License
- Life and Health Counselors License – sells insurance advice for a fee
- Life Producers License-life and annuity products only

Texas Property and Casualty licenses available include:

- Property and Casualty Producers License-personal and commercial lines
- Personal Lines Producers License – Homeowners and Personal Auto
- Insurance Service Representative – a salaried employee within the confines of the office who explains coverages, quotes rates and binds under the supervision of a licensed P&C Producer…kind of a Jr. Agent
- Managing General Agent – a person or corporation who has supervisory responsibility for the local agency and field operations of an insurance company within the state of Texas. Derives most of his income from premium volume written by other Producers
- Surplus Lines Producer – represents nonadmitted companies
• Risk Manager

Nonresident Producers (Ins.4056.001-.004)

It’s easy to imagine that an Arkansas-licensed Producer who lives in Texarkana, Arkansas might occasionally wish to sell a policy on the Texas side of the border. To do this, she would need a license, but you cannot have two resident licenses. She would seek a Texas Nonresident Producers license. If she is a Producer in good standing in Arkansas, she would have no Texas exam requirement…simply fill out the forms and pay the fees. This presumes that Arkansas has reciprocity with Texas. In other words, Arkansas would extend the same courtesy to a Texas licensee seeking a nonresident license in Arkansas.

Temporary License (Ins.4001.151-.156)

If you intend to sell insurance to the general public and an agency, company or HMO is considering appointing you as a representative, you may obtain a Temporary license for a period not to exceed 90 days while you are under the supervision of and undergoing the training offered by your prospective employer. No test is required for the issuance of this license. It’s kind of like the learner’s permit you got before you took your Driver’s Test. A Temporary license cannot be issued to or renewed by the same person more than once in a consecutive 6-month period.

If a Temporary license is not received by the 8th day following proper application and payment of fees, and if the sponsoring company has not been notified of application denial, they may assume that the Temporary license will be issued and the applicant may proceed to act as a Producer.

PRODUCER REGULATION

One Producer, One License (TAC 19.902)

As a Producer, you may hold only one insurance license of the same type. Yes, you can have both a Life and Health and a P&C license, but you cannot have two P&C licenses. Your license will be issued in your true name…even if it is Wilbur Schmotz. If you wish to operate your business under the name Wild Willy’s Insurance, that would be permissible if you file a copy of the Assumed Name Certificate with the Department properly reflecting registration of each assumed name utilized.
You may not:

- Use an **assumed name** to mislead the insuring public
- Use a name which might lead a person to believe that you are any way a representative of the **federal, state or local government**
- Use a name that **disguises** the fact that you are in the insurance business.
- Use a name that implies that you are some sort of **unpaid insurance advisor**.

**Acting Without a License** (Ins. 4001.101)

The rule is fairly simple…you cannot act as a Producer unless you are one. In other words, it is against the law to impersonate an Insurance Producer. Furthermore, it is unlawful for a company or HMO to appoint you as a representative unless you are properly licensed.

**License Expiration and Renewal**

(Ins. 4003.001, .004, .006, .007)

Unless suspended or revoked, your license will expire on the **second anniversary of the date of original issue**. You may renew your license prior to expiration by filing a renewal application and paying the appropriate renewal fee. Your original license remains in effect until you are issued the renewal license. What if you mess up and don’t renew before your license expires? Better get busy, and, by the way, there are penalties:

- If your license expired **1 to 90 days ago** – Submit your renewal app, renewal fee, and a penalty of 1/2 of the renewal fee.
- If your license expired **91 to 365 days ago** – Submit a **new** app, license fee, and a penalty of 1/2 of the license fee…but no test.
- If your license expired **366 or more days ago** – After a year, you can no longer buy your way back in. You’ need to take the licensing exam again, submit a new app, any other requirements, and the license fee.

**Continuing Education Requirements**

(Ins. 4004.051-54, TAC 19.1001-.1021)

Texas law not only requires that you demonstrate a minimum level of competency to obtain a license, it also mandates that you continue your insurance education after licensure to keep up with changes in
the industry and to continually serve your clientele in a knowledgeable, professional manner. You must complete **30 hours during every 2-year license renewal period**, with **2 hours of Ethics/Consumer Protection** as part of the 30 hours. There is **no penalty for multiple licenses**. If you hold a P&C license, you need 30 hours every two years. If you hold both a P&C and a Life and Health license, you still need only a total of 30 hours every two years. At least **50%** of the requirement must be met with **classroom** or classroom equivalent hours. Classroom equivalent courses may be internet, CD-ROM, DVD or other computer based presentations which provide at least **4 tests per hour** of instruction. A **70% score** is required for credit.

Those who sell Annuities, Medicare Advantage, Long Term Care Partnership, Small Employer Health Benefit Plan, or Flood Insurance need an initial certification course and a specific number of specialty course hours during each renewal period. The following chart summarizes Con Ed requirements for Producers.

**Continuing Education Requirements**

<table>
<thead>
<tr>
<th>Licenses</th>
<th>Initial Certification Course</th>
<th>Requirement for each 2-year Renewal Period</th>
<th>Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Life, Accident and Health Producer</td>
<td></td>
<td><strong>30 hours including 2 hours</strong> of Ethics/Consumer Protection training</td>
<td>Automatic fine of $50 per CE hour not earned – no exceptions, no mercy!</td>
</tr>
<tr>
<td>Life Producer</td>
<td></td>
<td><strong>NONE</strong></td>
<td></td>
</tr>
<tr>
<td>Accident and Health Producer</td>
<td></td>
<td><strong>NONE</strong></td>
<td>No additional requirements for multiple licenses – a Producer who holds a L&amp;H license and a P&amp;C license still only needs a total of 30 hours every 2 years</td>
</tr>
<tr>
<td>Life and Health Insurance Counselor</td>
<td></td>
<td><strong>NONE</strong></td>
<td></td>
</tr>
<tr>
<td>Property and Casualty Producer</td>
<td></td>
<td><strong>NONE</strong></td>
<td></td>
</tr>
<tr>
<td>Personal Lines Producer</td>
<td></td>
<td><strong>NONE</strong></td>
<td></td>
</tr>
<tr>
<td>Adjusters of all types</td>
<td></td>
<td><strong>NONE</strong></td>
<td></td>
</tr>
<tr>
<td>Limited License and/or County Mutual License</td>
<td></td>
<td><strong>10 hours</strong> each renewal period, which includes 2 hours of Ethics/Consumer Protection training</td>
<td></td>
</tr>
<tr>
<td>Nonresident License</td>
<td></td>
<td><strong>NONE</strong></td>
<td>Comply with requirements of home state</td>
</tr>
<tr>
<td>New Texas resident who had previously been licensed in another state and obtains a Texas license</td>
<td><strong>NONE</strong></td>
<td>Comply with Texas requirement on prorated basis, depending on when he or she became a resident in the renewal cycle</td>
<td></td>
</tr>
</tbody>
</table>
### More Con Ed Information

You **may NOT carry over hours** from one licensing period to the next.

It is possible to get an **extension or even a waiver** of the Con Ed requirement by applying before the end of the reporting period. Illness, disability, call to active military duty in a combat theater are all circumstance in which an extension or waiver could be granted if proper documentation is presented to the Department. The types of courses that can be approved for Con Ed credit include:

- Applicable insurance laws and rules
- Recent and prospective changes in coverage
- Technical policy provisions and underwriting guidelines
- Duties and responsibilities of the Producer
- Consumer protection
- Agency management
- Insurance ethics

When you participate in an approved Con Ed class you will be given a Certificate of Completion. It is your responsibility to **maintain these certificates for at least 4 years** from the time you complete the coursework. Why all the paperwork hassle? Because when you complete your license renewal paperwork, you must affirm that you have met the Con Ed requirement and be prepared to show evidence if requested by the Department. Failure to obtain the required number of Con Ed hours triggers an automatic fine of **$50 per hour** not completed.

<table>
<thead>
<tr>
<th>Annuity Producers</th>
<th>4 hour certification course before selling Annuities</th>
<th>4 hours specific to Annuities during each renewal period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicare Advantage (or Medicare Part D)</td>
<td>8 hour certification course before selling Medicare Advantage</td>
<td>16 hours specific to Medicare Advantage during each renewal period</td>
</tr>
<tr>
<td>Long Term Care Partnership</td>
<td>8 hour certification course before selling LTC</td>
<td>4 hours specific to LTC during each renewal period</td>
</tr>
<tr>
<td>Small Employer Health Benefit Specialty Plan (SEHBSP)</td>
<td>8 hour certification course before selling SEHBSP</td>
<td>4 hours specific to SEHBSP during each renewal period</td>
</tr>
<tr>
<td>Flood Insurance</td>
<td>3 hour National Flood Insurance Program certification course before selling Flood insurance</td>
<td></td>
</tr>
</tbody>
</table>
Commissions and Fees (Ins. 4001.057; 4005.053, .054)

Temporary Licensees – May not collect commission on sales made to themselves, relatives by blood or marriage, former employers or former employees.

No Finder’s Fees – Commissions may not be shared with anyone who is unlicensed for the type of business which generated the commission.

Additional Fees Prohibited – A Producer cannot simply tag on an extra fee and collect it from a policyowner. Only fees allowed by law and fully disclosed are legal.

Controlled Business – You may not obtain and keep a Producer’s license in order to sell insurance to yourself, your family, your employer or your employees. You must, in every calendar year, produce at least 25% of your premium volume from people outside of your control.

Joint Advertising by Similarly Licensed Producers (TAC 19.904)

Two or more Producers holding the same type of license may jointly advertise their names to the public. However, it must be perfectly clear which Producer makes the solicitation and is responsible for servicing any account in question.

Referral Business and Insurance Company Appointments (Ins. 4001.051(d), 4005.053, TAC19.905)

If a client refers his brother to a Producer who has given him excellent service, the client is not acting as a Producer unless he discusses specific insurance terms and conditions with his brother.

Neither a company nor a Producer can pay a commission to an unlicensed person. However, finder’s fee can be paid to a licensed Producer.

It is certainly legal for a company to pay renewal commissions to a Producer who has retired and given up his license but was legally licensed when he originally sold the policy.
Reporting Change of Address and Other Actions  
(Ins. 4001.252, 4003.009, TAC 19.906)

As a licensed Producer, you must notify the Department within **30 days** of:

- A change in your **mailing address**
- A **felony** conviction
- Action taken against you by a financial or insurance regulator in this or any other state

When a corporation or partnership is licensed as a Producer, the Department maintains biographical information on officers, directors and partners of the licensed entity. As a licensed Producer, the corporation or partnership will notify the Department within **30 days** if:

- An individual who was required to file biographical data with the Department is convicted of a felony
- An officer, director or partner is added or removed.

Records Maintenance (Ins. 4001.255)

As a Producer, you must maintain all insurance records, including those relating to customer complaints, separate from the records of any other business in which you may be engaged.

Illegal Conversion of Funds (Ins. 4005.101(b)(4))

As a Producer, you may not convert to your own use or illegally withhold money belonging to a(n):

- Insurance company
- HMO
- Policyowner or beneficiary

Probation Due To Disability  
(Ins, 4006.001-.056, TAC 1.1501-.1506)

A Producer who suffers from a physical, mental or emotional condition that significantly impairs his ability to carry out his professional responsibilities to his policyowners, company and/or the public at large, can be put on probation while seeking professional help necessary to aid in his recovery.
**Producer Appointment** (Ins. 4001.201)

As a licensed Producer, you may not engage in the business of insurance until you are appointed as a representative of an insurance company authorized to do business in this state.

**Termination of Appointment** (Ins. 4001.206)

If a Producer is terminated for cause, the Department needs to be notified so one bad apple doesn’t simply float from one insurance company or agency to the next.

The company, agency or Producer who makes the termination will file with the Department a statement of the facts relating to the termination. The Department will immediately record the termination, thus ending the subject Producer’s ability to represent his former employer.

Any document, record or statement about termination that is disclosed to the Department is privileged and is **not admissible** in any court action, except under subpoena. Moreover, a company, employee or Producer who provides – without malice – information required for termination is not liable in a civil suit for providing the information.

**DISCIPLINARY ACTIONS**

**Denial of License** (Ins. 4005.101, .102)

The following are grounds for license denial or disciplinary action:

- **Willful violation** of the insurance law
- Material **misrepresentation** on the license application
- Attempt to obtain a license by **fraud**
- Misappropriation of funds belonging to an insurance company, policyowner, or beneficiary
- **Misrepresentation** of the terms and conditions of an insurance policy
- Conviction of a **felony**
- **Rebating** (I’ll give you half my commission if you buy from me.)
- Using the license to purchase insurance for yourself, a family member or business associate **without any real intention** of marketing to the general public
Remedies

In addition to any other remedy available under the law, the Commissioner could deny, suspend, revoke or deny renewal of your license. He can put you on probation, reprimand you, fine you or force you to re-qualify for your license.

Cease and Desist Orders
(Ins. 83.001-.153; 541.108; TAC 1.901-.911)

A Cease and Desist order is reserved for the most serious violations which are not only unfair, unlawful or fraudulent, but create an immediate danger to the insuring public.

In two simple words, a Cease and Desist order means stop it! Receipt of the order is considered to be notice. It requires the affected person or company to stop the actions described in the order. The order is final on the 31st day after it is received unless the affected person or company requests a hearing.

The person or company in receipt of the Order has 30 days to request a hearing to contest the validity of the order.

Hearings

The Hearing must take place within 10 days of the Commissioner’s receipt of the request for hearing. The burden of proof is on the person or company who requests the hearing to show cause why the Commissioner’s order should be set aside. Based upon the evidence presented, the Order can be affirmed, modified or set aside in whole or in part. If, following the hearing, the Commissioner reasonably believes there is evidence to show that the person or company who is the subject of the hearing has violated the Cease and Desist Order, the Commissioner may:

- Initiate proceedings to impose an administrative penalty (fine) or require restitution or both;
- Refer the matter to the Attorney General for enforcement;
- Initiate proceedings to revoke the person’s license or the Company’s Certificate of Authority;
- Pursue any other action appropriate under applicable law.
Hearing on the Administrative Penalty

Let’s hope you’re keeping score here. First the Commissioner issued an order. If the Commissioner pursues action to impose an administrative fine or other penalty, you have 30 days to request a hearing. He will serve on the subject notice of the time and place of a hearing to be conducted no sooner than 21 days after the date notice is given. A person or company affected by an order of the Commissioner can take their case to a real judge by filing suit in a Travis County district court within 20 days of the final order.

Imposition of Administrative Penalty - Restitution

If the Commissioner determines that his Cease and Desist order has been violated, he may:

- Impose a fine of $25,000 for each violation
- Direct the subject to make restitution to each Texas resident, policyowner, or entity in this state who is harmed by the violation

If the subject fails to pay the penalty or make restitution, the Commissioner may cancel or revoke any license or Certificate of Authority held by the offender. He may further refer the case to the Attorney General for enforcement.

Surrender of License (Ins. 4005.107; TAC 19.2)

Surrendering your license in an attempt to avoid disciplinary action will not work. Nice try, though.

UNFAIR TRADE PRACTICES (TAC 21.3)

Misrepresentation of insurance policies, unfair competition and unfair practices by insurance companies, Producers or others in the industry is prohibited. No one will engage in any trade practice that is a misrepresentation of an insurance policy or that is a deceptive act or practice within the borders of this state…Don’t Mess with Texas!
Misrepresentations (Ins. 541.051; TAC 21.4)

The term misrepresentation is defined in the law as:

- An untrue statement of material fact
- Omission of material facts which renders the statements made misleading
- Statements made in such a manner that a reasonably prudent person is likely to come to a false conclusion
- A material misstatement of law

False Advertising (Ins. 541.052; Tac 21.115)

Essentially any communication with the public intended to solicit insurance is considered advertising. All of channels we would normally think of fall under advertising…newspapers, magazines, posters, direct mail, radio, television, billboards, internet postings. But, here we go even one step farther. Even your memorized sales presentation, complete with a flip chart or computer images on your laptop, is considered to be advertising. About the only communication that would not be considered advertising would be a notice circulated by your agency or company that is not meant for the consumer public.

Advertising cannot be untrue, deceptive or misleading.

An advertisement which mentions the word “dividend” cannot imply in any way that dividends are guaranteed and certain to be paid.

Defamation of an Insurance Company (Ins. 541.053)

It is an unfair method of competition to directly or indirectly publish or circulate a statement that is false, derogatory or maliciously critical of the financial condition of an insurance company. If it is calculated to injure the reputation of anyone in the insurance business, it is defamation.

Boycott, Coercion and Intimidation (Ins. 541.054)

It is an unfair method of competition to enter into any agreement which tends to result in the unreasonable restraint of trade intended to create a monopoly in the business of insurance. Furthermore, you cannot bully your clients. “Buy this policy, or you’ll never see your cat again,” would qualify as an Unfair Trade Practice.
False Financial Statements (Ins. 541.055)

It is a deceptive act to intentionally file a false statement concerning the financial condition of an insurance company. It is also a deceptive practice to make a false entry or willfully omit pertinent information from a company’s books and records with the intent to mislead an examiner.

Unfair Discrimination (Ins. 541.057)

A company cannot unfairly discriminate between two individuals of the same risk class when determining premiums, dividends, or any terms and conditions of the contract. Recognize that the key word here is unfair…we discriminate in insurance all of the time…against young people in Auto insurance, against old people in Life insurance.

Rebates (Ins. 541.056; 4005.053(c)(1), 101(b)(9)

In the Life and Health business, it is illegal to buy business…offering any special inducement to the policy purchaser is considered a rebate.

Testimonials, Appraisals or Analysis (TAC 21.107)

No insurance advertisement may state or imply that it is endorsed in any way by any division or agency of Texas or of the United States of America. To say that your Homeowners policy was approved by the Texas Department of Insurance makes it sound as if the Department is endorsing your policy…obviously, all Homeowners policies available for sale in Texas have been approved for sale by the Department.

Anyone who has a financial interest in the company or who is compensated for making a testimonial is considered a spokesperson for that company and any advertising making use of the endorsement of a paid spokesperson must indicate that it is a Paid Endorsement.

If an endorsement is made by someone other than a paid spokesperson, it must represent that person’s current opinion and only reflect that individual’s personal experience with the subject insurance company and its products.

False Use of Statistics (TAC 21.108)

Statistical information must be current and complete. The source of the statistical information used in an advertisement must be cited. Most importantly, the statistical information cannot in any way misrepresent the relevant facts.
Unlawful Inducements (TAC 21.109)

Nothing can be promised beyond what is contained in the policy for the purpose of persuading someone to buy the policy.

Disparagements

An advertisement may not directly or indirectly unfairly disparage competitors, their policies, services or methods of marketing insurance.

Unfair Comparisons (TAC 21.111)

An advertisement may not directly or indirectly make an unfair or incomplete comparison of policies, benefits, dividends, and rates or compare non-comparable contracts.

UNFAIR CLAIMS SETTLEMENT PRACTICES
(Ins. 541.060, 542.001-014, TAC 21.201-205)

Producers must play fair in selling a policy, and both the Producer and the insurance company have to play fair in settling claims. Unfair Claims Settlement Practices include:

- **Misrepresenting material facts** to a claimant relating to coverage
- **Failing to acknowledge** with reasonable promptness pertinent communications with respect to claims. Acknowledgement within **15 business days** is presumed to be reasonably prompt.
- **Failing to provide claim forms** that are required in order to make a claim
- **Failing to respond promptly** to a request for personal contact about the claim
- Failing to attempt in good faith to make **prompt, fair and equitable settlement** of a claim for which the company’s liability is reasonably clear
- Attempting to settle a claim for **less than** a reasonable person would expect based upon company advertising
- Using coverage under one portion of the policy to **force settlement** of a loss which falls under a separate policy coverage
- Failing to promptly provide the policyowner with a **reasonable explanation** of the company’s denial of the claim or offer of compromise settlement
- Failing to affirm or deny coverage within a **reasonable time**
- **Delaying settlement** under applicable first party coverage on the basis that a negligent third party is responsible
- **Delaying settlement** of a claim under the Texas Auto policy, solely
because there is other insurance which can fully or partially settle the claim

- Seeking **full release** from the claim when only **partial payment** has been made
- Refusing to pay a claim without conducting a **reasonable investigation**
- Requiring the **claimant’s tax return** as a condition for settling the claim unless the claim involves a fire loss, or lost profits or lost income
- **Failing to adopt reasonable standards** to assure the prompt investigation of claims
- Compelling claimants to **file suit** in order to collect a valid claim
- Failure to maintain a **complete record** of all complaints received in the previous 3 years.

**PENALTIES**

(Ins. 82.001-.056; 84.001-.051; 4005.1020; Ins. 4001.254; 4005.101, .102, .105)

For violations of the Texas Insurance Code that do **not** create an immediate danger to the insurance company, the Commissioner may, after notice and opportunity for a hearing, revoke or suspend the legal authority of any person or company to conduct insurance in the state. It gets worse! The Commissioner will give notice of his actions to the Commissioners of the other 49 states. As we have seen, the Commissioner may also order restitution, and/or levy an administrative fine.

The Commissioner will revoke, suspend, or refuse to renew the license of a person who does not maintain the qualifications necessary to obtain the license in the first place. For example, a convicted felon does not meet the qualifications to earn a license, so a Producer is convicted of a felony while holding a license will likely have a hard time keeping it.

A person whose license has been denied or revoked **may not reapply** for a license until after the 5th anniversary of the denial or revocation.

If the Department determines that a violation has occurred, it will deliver to the Commissioner a report outlining the facts of the case and a recommendation for the penalty to be imposed. The Department will give written notice to the affected person (generally by certified mail) within 14 days after the report is issued. In writing, the person can either accept the Department’s determination or a hearing can be requested within 20 days from the date of notice. Whatever the decision, it must be communicated in writing.

If the hearing confirms the Department’s findings, the recommended pen-
alties may be imposed.

The amount of the administrative fine may not exceed **$25,000** unless a greater penalty is specified for the specific. Within **30** days of the Commissioner’s order, the subject must either pay the fine or request judicial review. If the court affirms the hearing decision, the fine must be paid with interest.

In 2009, the Texas legislature acted to give the Commissioner more power over rules and penalties. (Ins. 84.004) The law says that the Commissioner has the authority to take any legal action to address a situation, whether or not it is addressed by a rule, and has the authority to set an administrative penalty (usually a fine!) for each specific violation, although $25,000 is still the limit for violation of an administrative penalty.

**CONSUMER PRIVACY REGULATION** (TAC 22.1-.26)

The federal law known as the Financial Services Modernization Act allowed banks, securities companies and insurance companies to merge, acquire and be acquired by one another. A major component of the Act dealt with consumer financial privacy. The federal law dictated compliance for banks, stock brokerages and similarly federally regulated institutions. Insurance, a state regulated industry, required legislation at the state level. The Texas legislature then enacted TAC 22, which requires that insurance companies develop and implement methods to govern the collection, disclosure and protection of personal information gathered on individuals.

Much of the information found on an insurance application is extremely personal and should not be shared indiscriminately. The law makes a huge distinction between **consumers and customers** as well as between affiliated and unaffiliated companies. In banking, a consumer could be anyone who uses a bank machine…a customer would be someone who has a checking account, a savings account and a mortgage…an ongoing relationship. In insurance, an applicant or a beneficiary would be a consumer; a policyowner becomes a customer. The law recognizes that insurance companies must make use of personal information in order to serve their customers…in certain circumstances even with affiliated companies. **Affiliated companies are companies which own or are owned by other companies.** In the entertainment field, Disney Corporation owns ABC Television and ESPN…all three would be considered affiliated companies. CBS would be a unaffiliated company. In insurance, the Life Insurance Company of Georgia and Southland Life are both subsidiaries of ING Group. All three are affiliated companies. As you would guess, Southland can share information with ING Group that it cannot share with Allstate.
TAC 22 requires that insurance companies provide customers with a **Privacy Notice** when a customer relationship is established and annually thereafter. The privacy notice must explain what nonpublic information will be collected, how it will be used, the circumstance under which it will be shared and how it is protected.

The notice must also outline the customer’s **right to opt out** of the sharing of information with unaffiliated parties pursuant to the Fair Credit Reporting Act. If a customer chooses not to opt out, information can be shared with unaffiliated parties, but they must honor the privacy terms of the original agreement. The customer must be notified every time the privacy notice is modified and given another opportunity to opt out…in fact, the customer can opt out at any time. TAC 22 provides for the privacy policy agreement between the company and the customer to **protect the customer’s personal, nonpublic, financial information.**

**INSURANCE FRAUD REGULATION**
(INS. 701.101-.154)

Anyone in the insurance business…individual, agency or company, who becomes aware of insurance fraud that has or will occur is **obligated, within 30 days, to report** that information to the fraud unit of the Department and may also report the same information to any other authorized government agency…police, Rangers.

Anyone…in or out of the insurance business who reports insurance fraud is given what is often called Whistleblowers Immunity. If Calvin believes that his neighbor Hiram set his own house on fire and reports this to the Fire Marshal, Calvin cannot be held civilly liable if it turns out that Hiram was in Canada when the fire began. However, if Calvin made his report maliciously…he knew it wasn’t Hiram, but he’s been angry with Hiram since the time that Hiram’s dog pooped in his yard and he now has a chance to get even…Hiram could sue and would likely prevail.

**U.S. PATRIOT ACT – MONEY LAUNDERING**

**Background**

In the wake of the 9/11 attacks, Congress passed the Patriot Act, which is strengthens U.S. measures to prevent, detect, and prosecute international money laundering and the financing of terrorism. These efforts include anti-money laundering (AML) tools that impact the banking, financial, investment, and insurance communities. The Financial Crimes Enforcement Network (FinCEN) of the Treasury Department issued rules for insurance companies to be in compliance with AML requirements.
Covered Products

The Covered Products are those that FinCEN believes have features, such as cash surrender values, that pose money laundering and terrorist financing risks, and include:

- Permanent Life policies
- Annuity contracts
- Other insurance products with features of cash value or investment

Covered products do not include:

- Reinsurance
- Group Life insurance
- Group Annuities
- Term Life (including Credit Life)
- Property and Casualty
- Health
- Other kinds of insurance policies that do not have cash value or investment features

The rules also do not apply to insurance companies that offer covered products as an incidental part of their non-insurance business, tax-exempt organizations offering charitable gift annuities.

The Rules

Insurance companies must develop and implement programs designed to prevent them from being used to launder money or finance terrorist activities. The AML program must be in writing and specifically:

- Incorporate policies, procedures and internal controls based on an internal risk assessment
- Designate a competent compliance officer responsible for administering the AML program
- Provide ongoing training for appropriate employees, agents, brokers and others
- Provide for independent testing of the program on a periodic basis.

Insurance companies are responsible for integrating Producers and Brokers into their AML programs by obtaining customer information from them and using that information to assess risks and identify indicators for money laundering. Part of the Patriot Act also requires insurance companies to share their information with banks and other financial institutions.
You can expect your insurance company to provide training in AML guidelines. In fact, your business relationship with an insurance company is in jeopardy if you do not cooperate with AML efforts.

**SARs**

During your AML training, you will learn that insurance companies are required to file **Suspicious Activity Reports** (SARs) with the feds. What is suspicious? A transaction involving **$5,000 or more** if the company “knows, suspects, or has reason to suspect” that a transaction:

- Involves funds derived from **illegal activities** or is intended to hide funds derived from illegal activities
- Is designed to **evade other reporting requirements** (such as those that apply to large cash transactions under the Bank Secrecy Act)
- Has **no business or lawful purpose**, or
- Involves the use of the insurance company to **facilitate criminal activity**.

Insurance companies are **only** required to file SARs that involved covered products. They are **not** required to report submissions of false or fraudulent information to obtain a policy or make a claim, unless a company believes that the activity is connected to money laundering or terrorist financing.
Key Points

Texas Insurance Commish

- **The Texas Ranger of insurance** – Implements the law, sets and interprets rules, rules the roost for insurance companies and Producers, holds hearings, imposes penalties, giveth and taketh away your license
- Runs the Department of Insurance
- Appointed by the Governor with consent of Senate for 2 year term

Insurance Companies Take Heed

- Need Certificate of Authority to do business
- Send annual $$ statement to Commissioner **every year**
- Expect a full review of records every 5 years
- Keep record of complaints for 3 years
- Commissioner can investigate claims practices, organize a hearing, and issue a **Cease and Desist** order
- **Unfair Claims Settlement Practices** will get you in trouble:
  - Misrepresenting material facts about coverage
  - Failing to promptly acknowledge communications (15 days tops)
  - Failing to provide claim forms
  - Failing a good faith attempt to reach a prompt, fair, and equitable settlement
  - Attempting to settle a claim for less than touted in company advertising
  - Using one claim in attempt to force settlement of another claim that falls under a separate policy
  - Failing to offer a reasonable explanation when denying a claim or offer of compromise settlement
  - Failing to affirm or deny coverage in a reasonable time
  - Delaying settlement with the first party on the basis that a third party is negligent
  - Delaying a Texas Auto policy settlement only because other insurance can settle the claim in part or in full
  - Failing to pay a claim when the company has not conducted a reasonable investigation
  - Requiring a claimant’s tax return as a condition for settlement, unless the claim involves a fire loss, lost profits, or lost income
  - Failing to adopt reasonable standards for investigation of claims
- Forcing claimant to file suit to collect a valid claim
- Failing to keep records of complaints for 3 years

Keep the Timelines Straight

Cease and Desist Order – Reserved for the most serious violations that pose a threat to the insurance public. The only way to get off the hook is to request a hearing within 30 days and disprove the charge; otherwise it takes effect on the 31st day.

Administrative Violations of the Code – If the Department thinks either you or a company has committed a violation, it investigates and then…

- Sends a report to the Commissioner. Unless the Commissioner says otherwise…

- Within 14 days, the Department sends a written notice to the allegedly guilty party, saying, in effect, “Here’s what you did and this is the penalty for it.” BUT…

- The accused party is able request a hearing within 20 days of the date of the notice.

- If the violation involves unfair, unlawful or fraudulent actions that create an immediate danger to the public, the Commissioner can issue a Cease and Desist order, whereupon…

- The accused is given 30 days to request a hearing, but otherwise…

- Must comply with the order within 31 days.

Lassoing Your Producer License

- Choose the license – P&C, Personal Lines, Life Accident & Health, Life & Annuities only, Surplus Lines
- Be at least 18 years old
- Pass licensing exam and apply for license within 12 months
- Be an all-round good hombre with no bad acts (like a felony) that would disqualify you
- Feed the paper monster – turn in application, send in the fees, submit fingerprints if requested
- Nonresident Producer – Live in a state with reciprocity, fill out the forms, pay the fees

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• **Temporary License** – Fill out the forms, prove that an agency, insurer, or HMO is planning on hiring you, and you’re good to go

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**Keeping Your Producer License**

• **Renew** every 2 years
• **30 hours** of Con Ed every 2 years – 2 of them in Ethics – **no carryover** of hours to next renewal period
• **Annuity Producers** – 4 hour certification before selling Annuities, 8 Con Ed hours on Annuities each renewal period thereafter
• **To sell Medicare Advantage** – First, an 8 hour certification course, 8 Con Ed hours every 2 years thereafter
• To sell **Long Term Care Partnership** – 8 hour certification course, 4 Con Ed hours every 2 years thereafter
• **Small Employer Health Benefit Specialty Plan** – 8 hour certification course, 10 Con Ed hours every 2 years thereafter
• **Commissioner** can deny, revoke, or suspend license for willful violation of the law or insurance regs, misrepresentation, fraud, felony conviction, rebating, misappropriating funds – all those things your grandmother told you to never do!
• **Stay away from Unfair Trade Practices:**
  - Misrepresentations
  - False advertising
  - Defamation
  - Boycott, coercion, intimidation
  - False financial statements
  - Discrimination
  - Rebates
  - Shaky testimonials, appraisals, or analysis
  - False use of statistics
  - Unlawful inducements
  - Unfair comparisons

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**More Rules of the Range**

• If you learn of **insurance fraud**, you are OBLIGATED to report it to the Department within **30 days**. You can also report it to the police if you want.
• **Personal information** – The Feds and the State demand you provide a **Privacy Notice** that explains how info will be collected and used. Unless the customer opts out, the info can be shared with unaffiliated parties.
Penalties for Insurance Varmints

- Selling insurance without a license – The judge will decide. It won’t be pretty.
- **Late License Renewal** – 1/2 the renewal fee UNLESS you’re more than a year late; then you gotta start all over with the test, app fees, etc.
- Not enough Con Ed hours? That’ll cost you **$50** for every hour you can’t prove.
- Violation of an administrative order – Hold onto your wallet! A fine of up to $25,000 per violation. Request a judicial review or pay up within **30 days** or your license can be revoked
- Violating certain clauses of the Texas Code can lead to **suspension or revocation** of license
- Your license been denied or revoked? No way to reapply for **5 years**, and that’s a serious hit in income.
Please return to your course player to take the Chapter 16 Study Questions.